REGULAR meeting of the Board of Equal Rights Commission held Wednesday, May 19, 2009 in room 301-B of City Hall, Milwaukee, Wisconsin.

PRESENT: George Williams, III
Michael Barndt
Ray Vahey
Ivan Gamboa

EXCUSED: Renee Taylor
Genyne Edwards
Chris Her-Xiong

Staff: Maria Monteagudo, Employee Relations Director
Rebecca Reyes Duke, Commission Staff
Heidi Galvan, Commission Attorney

Agenda Item #1

The meeting was called to order by Chairperson Williams at 2:05 p.m.

Agenda Item #2

Approval of minutes from the May 6, 2009, meeting was waived as the Commissioners needed additional time to review them. The Commission received an update from Attorney Galvan on the Paid Sick Leave Ordinance court proceedings indicating that Judge Cooper is expected to make a ruling with 30 days of the hearing date of May 11, 2009. In addition, the City Attorney's Office is reviewing additional public comments and will meet with Ms. Monteagudo for a final review. Commissioner Vahey indicated that he will be out-of-town during the week of the next Commission meeting but said that he would be available for a conference call.

Agenda Item #3

PAID SICK LEAVE ORDINANCE - COMMITTEE UPDATE

Commissioner Gamboa stated that the PSLO Committee met last week to determine the role the Commission should play prior to Judge Cooper's ruling. Commissioner Gamboa asked if any action was necessary on the Paid Sick Leave Ordinance (PSLO) Rules prior to the Judge's ruling. Ms. Monteagudo stated that PSLO Sub-Committee was going to draft some language for Rules 8, 13 and 15. Commissioner Gamboa stated that he felt that the Sub-Committee would defer to the suggestions and recommendations from staff and the City Attorney's Office before attempting to draft language to address some of the public feedback. Attorney Galvan said that she would send an email to the City Attorneys working on this to get back to the Committee.

Commissioner Gamboa stated that the work will come after the law is enacted. There were no further updates from this Committee.

ACCOUNTABILITY COMMITTEE – UPDATE

Commissioner Barndt reported that they have had one meeting. He encouraged other Commissioners to participate in the process of researching what the Committee should be looking into. He indicated that Commission staff should be researching the social and economic equity involved City hiring practices to ensure that these practices are equitable. This could involve the creation of a "Report Card" on City hiring practices. Commissioner Barndt went on to mention some of the following brainstorming items that came up in the meeting:

- Compare City hiring practices to the rest of the metro area;
- Review how DER reports on hiring practices;
- What are the challenges that the City faces?
- Look at a "snapshot" of employment in the City (demographics);

Ms. Monteagudo indicated that DER has an analysis of employee demographics according to job code that could be reviewed by the sub-committee.

- Are there any staffing patterns that should be reviewed?
- What is the pattern of layoffs within City employment?

Ms. Monteagudo interjected stating that layoffs are a subject of mandatory bargaining and should not be included in the sub-committee's discussion. Everyone agreed that there needed to be clarification on how the City Service Commission and Unions relate to the Equal Rights Commission in dealing with employment issues. Commissioner Barndt then continued with his report on other items that came up in the Sub-Committee's meeting. He stated that the Sub-Committee talked about employee comfort issues and issues relating to office climate. He said that it was his understanding that there are designated persons within departments to help out in planning events or assisting fellow employees with employment issues. Ms. Monteagudo stated that each department has a designated Complaint Intake Advisor that can assist fellow employees with filing a complaint regarding a violation of a City policy, but that these designees are not in charge of planning any type of departmental events. She went on to say that department's will plan events/activities but it is at the discretion of the department and there are no "formal" entities charged with that responsibility. Commissioner Brandt went on to expand the topic of employee comfort to include discussing:

- Expanding educational opportunities
- Ensuring that supervisors have adequate knowledge/training to effectively do their jobs
- Expand opportunities for the surrounding community
- Encourage the City to support small businesses

Commissioner Brandt's references to supporting small businesses lead to additional discussion including what mechanisms are in place for the City when making procurement decisions. He made reference to the City beginning or planning to begin an impact analysis on City Purchasing decisions. This analysis would include reviewing past practices, identifying priorities and determining in what direction the City is going in.

Commissioner Barndt stated that there are a wider range of issues regarding accountability to include an "Accountability Reporting System" and ensuring social and economic delivery to all citizens. Commissioner Williams said all of the Commission members would be involved with the Accountability Sub-Committee by way of the Committee doing the background and then the rest of the Commissioners will follow their lead. Commissioner Brandt agreed stating that key reports from the Accountability Sub-Committee would be brought before the Commission for review. He also indicated that if a meeting is set up with the Mayor's Accountability in Management staff, an invitation to all Commissioners would be extended. Commissioner Gamboa also suggested listing which Commissioners staff which committees and assign other members that are not staffing a committee. Ms. Monteagudo suggested asking those Commissioners whom are not currently serving on a Sub-Committee, which one he/she would like to a part of.

COMMUNITY ENGAGEMENT COMMITTEE – UPDATE

Commissioner Vahey stated that he and Commissioner Edwards have had one meeting which included discussion on two issues, both relating to the reference document that Intern Leslie La'Bonte put together. He indicated that he would like to see this document in a format that would make it more easily navigable, perhaps converting it to an Excel document. He would like to be able to sort it by category to provide a more user friendly format while at the same time providing more visibility to neighborhood groups. Commissioner Barndt said that he would be able to convert it to Excel and Commissioner Gamboa stated that he would be willing to help as well. Commissioner Vahey said that he would like to speak with Commissioner Edwards about what format the document should be in prior to posting on the website. Ms. Monteagudo asked if the Sub-Committee would like the document posted now or wait until changes have been made and the full Commission review it. Commissioner Brandt asked if it was appropriate for the Sub-Committee post the document when they feel it is appropriate as this is a document that will be continuously updated. He then motioned to empower the Sub-Committee to approve document postings. Commissioner Gamboa seconded the motion. All present Commissioner Members voted aye to Sub-Committee approval of documents prior to posting. Chairperson Williams motioned to have all Sub-Committee reports submitted to the full Commission. The motion was seconded by Commissioner Barndt. All present Commissioners voted aye to having Sub-Committee reports submitted to the full Commission.

Agenda Item #4

PSLO ADMINISTRATIVE RULES – ADDT'L DISCUSSION REGARDING PUBLIC FEEDBACK.

Chairperson Williams called on Commissioner Gamboa for direction on how to go with this agenda item. Commissioner Gamboa stated that the purpose of the feedback was to let the City Attorney's Office know what the Commission is concerned about and note what the publics' comments were about. He indicated that he had given his feedback to

the City Attorney's Office via email and at the last meeting. He said that for this meeting, he has outlined some of the public comments that were not covered by his feedback. Commissioner Gamboa then asked the Chair how he wanted to proceed with this discussion. Chairperson Williams said there was no reason to go over things that have already been covered. He said the first page of definitions was not covered, so at some point in time, the Commission can go over the definitions. He stated that Rule #1 was covered, so he moved on to Rule #2 and #3.2. Commissioner Gamboa stated that he did not have any feedback on the Commission's comment but he did have feedback from Aurora on Rule 2.3 regarding sick leave accruals, so the City Attorney should take a look at that comment. Also Rules #3, #3.2, #3.4 there is some feedback from MMAC and some other comments that were not discussed at the last meeting and the City Attorney's Office should review. Commissioner Barndt stated that comments from agencies such as MMAC are different that the type of public comments that they have already reviewed. He said that he felt more comfortable having the C.A. review these first and then have the Commission take a look at the suggestions for change that are presented by the C.A. He said he didn't feel comfortable just saying whether he liked or disliked a comment that was made, but would rather add to the discussion or call attention to something that is of concern. Ms. Monteagudo said that she thought it was okay to say "call attention to something" because it implies that you are intrigued—if possible, if legal, if enforceable, you as a Commissioner would like for the C.A. to have a response to that comment. It doesn't have to do with liking or disliking something, it indicates that you, as Commissioners, are expressing an interest in a comment and would like a response from the C.A. regarding that particular comment. Chairperson Williams said that he would like to go back to the beginning and go through the PSLO Rules one-by-one and will then ask if anyone wants to have a discussion about a particular rule. If a discussion is needed on a rule, we will put a hold on that rule and come back to those that we have held. We know that the C.A. is reviewing everything so, our purpose today is to discuss what you, as Commissioners, would like to comment on today. Chairperson Williams then called off each rule and asked the Commissioners to place a "hold" on any rule that they had questions/comments on. After going through Rules 1-24, the Commissioners then went back and discussed those rules that had a "hold" on them.

Chairperson Williams began by going back to page one and asking if there were comments on definitions. Commissioner Vahey indicated that there are some places where "employer" is referred to as "a person" and other areas where "employees" are referred to as "a person". He said that if the reference is to "employer", then it should say "employer". Ms. Montegudo asked if there were any specific examples she could review. Commissioner Vahey stated that he thought it was in Rule 24. Ms. Monteagudo stated that Rule 24 comes directly from Chapter 109 and in drafting the ERC administrative rules, they could not touch the language. Ms. Monteagudo asked Attorney Galvan to make a note of this and find out if there is the opportunity to make "housekeeping" changes to 109. She also indicated that this would require Common Council action.

Rule 3.5

Chairperson Williams then moved on to Rule 3.5. As there were no comments/questions, he moved on to Rule 4.1.

Rule 4.1

Commissioner Barndt asked if there was any further information on item 6.Ms. Monteagudo replied that item 6 was still under review. Commissioner Gamboa suggested that a good way of making it easier on the administrative end was to carryover the 40 hours and 72. Commissioner Barndt indicated that he was not sure he agreed with that position and suggested that there needed to be clarification on how to calculate carryover. It seemed to me that if 40 hours were carried over from one year to the next, that the taking of some time within that year, would not affect carrying over 40 hours into the following year. I agree that there is room for ambiguity in the way that this works and I think it was interesting that we had a rule…..

GW:
Let me interrupt. Are you following?

MM:
No. Let me just say something before you proceed. There is a hard cap on accrual and there is a hard cap on usage. So whatever gets carried over is what they have accrued, but not used--understanding that there is a cap on 40 and 72.

IG:
Per year…So if you are at year 3, you could have accrued 72 x 3. That is why we think it is proper just to carryover the 40 and the 72 because, theoretically…..

MM:
But, that's what is says. Maybe it needs to be clarified, but that is the intent of it. You can only carry over, from what you have accrued, you can carry over what you don't use, but the cap is 40 and 72. So if you use 40….

IG:
I think it just needs to be more explicit, because if you don't use sick leave for 3 years, you could have 72 x 3.

MM:
No. Absolutely not.

MB:
No, I understood the cap but the specific question as it reads here, the example is: 72 hours are earned in one year, not used, and carried over into the next year. The employee used 50 hours by the end of the subsequent year, how many hours are carried over into the third year? My understanding is that the answer to that is 72. That the person started the year with an accrual of 72 and during the year, they were earning

hours as well and using them. So, by the end of that year, they will carry 72 again. That is clearly one way to read this and the fact that it is ambiguous, simply means that there will need to be more clarity. I had read the original statements and said, "Oh, the answer is 72." And if you think there is a different answer or you think that there are implications to the policy being one way or another, I would leave it in your hands to clarify that. I guess part of my concern is that it seemed straight forward based upon the way it had been worded and….is there some way we can address the ambiguity here?

MM:
I think there might be, but of course I was looking at point #4 as you were talking about those issues. I'll make a note to take a closer look at #5, I understand what the question is…

MB:
It is #6.

GW:
I think we are looking at a different document…

MM:
Rule 4.1, sub.5.

MB:
Okay. I am looking at "statement 6" of the original feedback document. I just want to make sure that there is a way to sort this out.

IG:
The way I read the rule is "an employee's use of sick leave". So it is "the use" cannot exceed 40 hours or 72, it didn't say anything about the maximum accrual.

MM:
Yes it does, up to a maximum of 40 and 72.

IG:
The use…

MM:
No. You accrue one hour for every…

IG:
But it doesn't say that…

MM:
Don't look there… you have to look at the definitions. You accrue 1 hour for every 30 worked, up to 72 for businesses and up to 40 for small businesses. So there is a cap

on accrual and there is a cap on usage. We will address the carryover now that I understand the question.

IG:
Okay.

GW:
Okay, Rule 5.3

Rule 5.3
MB:
This is just following the spirit of saying that I would hope you are addressing the concerns that someone else may have about ambiguity with FMLA. That this was clearly one of the things that you were looking at to make certain that we are not adding rules that complicate the way this other legislation reads. I found that I didn't understand this statement because I didn't understand enough about FMLA. I am not asking for an explanation at this point—just calling attention to the fact that the objective should be no conflicts.

MM:
However, you have to be careful because with FMLA, the State and the Feds, depending on which one you are looking at, have different provisions that deal with what employees are eligible for. What type of medical certification is required for somebody to invoke their FMLA rights. I would caution the Commission of being in a position where you are picking and choosing portions of the FMLA for some rules but not for others.

MB:
Let me get some clarification on this point. Do you feel that there are times when the specific language of the rules will differ in their application than the language in FMLA for those employees that are covered by both?

MM:
I will give you an example of that. The FMLA requires the employee to submit a pretty extensive medical certification completed by a physician documenting that the reason for the absences is for a serious health condition as defined by the FMLA. The PSLO says "you will not impose unreasonable barriers for use". There is total contradiction in that particular area.

MB:
Except that the specific rights that the person gains by providing that additional information…well I guess I am not entirely clear….but the Family Leave 30 days, is it also related to sick days in a direct way or does it cover a variety of other things?

MM:

Absolutely. Your own serious health condition or that of an immediate family member. The definition of immediate family member is a lot more limited than the PSLO. So there is a lot of areas where there may be opportunities to overlap, there is many more that are not. There is a City Attorney who is an FMLA expert and she is looking at this.

HG:
I think that you can look at it from a point of view that FMLA is a lot broader and is going to cover more expansive illnesses or lengthier terms. Obviously because of that, the employer can require you to verify in much more detail and be able to ask more questions, and are permitted to do so, because you may be asking for a month off due to ongoing radiation treatments. Paid Sick Leave is not going to cover that. You are going to have to go through extensive grounds and actually go through your employer and provide verification. I think that while there is some overlap, you have to look at practicing policy as the pre-course to FMLA. A person could use sick leave and later discover that there is a greater issue to their health concern and then apply for FMLA and that would then take over. I guess if you wanted to hear that way….I don't know if that simplified it for you?

MB:
So what I hear you saying is that the specific choice of an employee to use the Sick Leave Ordinance can be treated as an incident independent of the use of FMLA. And, it is not simply a matter of saying that particular employees who are covered by both, allow the more restrictive requirements of the FMLA to kick in, even for the…..

MM:
The employer does have the opportunity to designate leave on their FMLA in spite of the fact that they may be using paid sick leave because otherwise you have two leave benefits going on at the same time and people are going to be gone for a year before you can run your business. So there is contradictory information in terms of that. I don't think the Commission should get in the business of telling employers how to manage their FMLA benefit or leave administration benefit. But, again, there is a City Attorney looking specifically at the interplay between the State FMLA, the Federal FMLA and Paid Sick Leave. If you think it is not complicated enough to have different benefits between the State and the Feds, just add Paid Sick Leave to this one.

MB:
I am only raising my questions because I would hope that as you are responding to these issues, that you are able to clarify for us where some of the complications may come in for us when we are hearing from persons with a complaint about how the sick leave rules are being applied. So, we would certainly like—we'd appreciate knowing where those ambiguities may remain. I was calling that to your attention only because it is an area that I'm not clear about yet and I will appreciate any additional information that you are able to give us.

GW:
Rule 5.5. Hearing no questions, Rule 6.

Rule 6

MB:
I put a question mark next to Item #1 and a question from Cooke & Franke.

MM:
Again, we have a City Attorney who is dedicated to Worker's Comp issues looking at this issue.

MB:
Okay. I was only raising it now to say that I would hope that you are helping us to understand this one.

GW:
The next hold was Rule 9.1.

Rule 9.1

RV:
Last week we, or last meeting we spoke a bit toward the Paid Sick Leave for tipped employees and when I began to raise the item for discussion today, I think I may have been looking at another document than this one.

MM:
That's the rules with the annotation as to what came directly from the Ordinance so that you have a better idea as to what you can recommend changes for as opposed to language directly from the Ordinance that we really can't touch.

RV:
Maybe it was from the Ordinance. Here is my concern. The Rule, as I see it here, says that the employee earns from his or her employment. But, there is added language that I picked up, and now I don't know where I got it from, and is provided by an employer to an employee.

MM:
That is all directly from the Ordinance.

RV:
That is all directly from the Ordinance.

MM:
Word by word.

RV:

Now I happen to believe that fair treatment would require, because we have a lower minimum wage tipped employees just because they are tipped, that that necessitates our finding a way to add to their wage from the employer, the information that is accumulated by the employer for their credit card tips and tips, and estimate for tips by cash. That would get to the true level of income from the employee who is being looked at. But to pay them at some really low rate because they are tipped, I mean…..

MM:
I am not going to comment on that. I personally look at that and I think what if a tipped employee happens to get lucky and get a $20,000 tip, now my employer is penalized for that as you look at that rule change.

RV:
That goes to an extreme, but…

MM:
But it could happen.

RV:
Yeah, but we are looking at making rules with broad application….

MM:
But you are also looking at Ordinance language that says "and paid by the employer" and now you are looking amending a rule that is consistent with the Ordinance language but that is just my personal opinion.

IG:
I mean, what you're saying is that you want a restaurant owner to pay someone that's sick, more than what they are paying their employees who show up?

MM:
That would be the unintended consequence of that example.

IG:
That just doesn't make sense to me at all.

MB:
It sounds as though the rule restricts the room for argument here but are there procedures where tips are aggregated across employees and then shared by the employer by all the employees?

MM:
Not required by law.

RV:
No. But they do report it to the IRS and the employee pays taxes on it.

MB:
Certainly a situation where a person gets tips and keeps them is different in some respects from whether a person participates in a pool of tips that are then allocated by the employer from the proceedings. If that is a distinction that doesn't get ruled out by the definition from the employer…

IG:
But even then, if someone doesn't show up, then all the people have to divvy up a share of the tips for the person that is sick?

MM:
I will make a note of your concern. It is a legal issue at this point. We'll be prepared to address it.

GW:
It is safe to assume that we will revisit 9.1.

MB:
I had a concern with respect to 9.

GW:
Now what?

MB:
9.1, the comment from Aurora and also the comment on 9-D, I'm not sure who made that point (Item 7 in these notes), but in both cases it is just a general comment. I'm not clear about how collective bargaining complicates the setting of policy within a business with respect to this Ordinance. I was struck, in the comment under 7, by the note that in San Francisco, there was an exemption of collective bargaining agreements. I didn't really understand that point. Is the implication in some of these statements that people are asking that when collective bargaining agreements are in place, that the Ordinance not be enforceable? Or are they asking for something more subtle?

MM:
I think it is something in between. I think that what they are asking for is 1) If there is a collective bargaining agreement that stipulates, and I'll just give you an example: Employees in their probationary period should not earn any benefits, why should the local ordinance dictate to that employer, you need to start accruing a benefit to an employee who is under a collective bargaining agreement, technically not eligible to do that. 2) Some of them are saying that if in collective bargaining, we have negotiated a benefit that is more generous than the 40 hours and the 72 hours, we want to be exempt. The Ordinance should not apply to us because we already provide the benefit to the employee. Those are some of the issues with this.

MB:
Certainly with that second point, there is other wording in the rules that allow employers to be more generous and the concern that I'm certain all of us have, is that exemption per say, applies to a clear definition of when the employer is going above and beyond and not just going above in certain instances and not applying in others.

MM:
Usually it is a little more complicated than that.

MB:
And the only point I'm making, of course in this case to by raising a questions, is that if you are identifying, if others are identifying that collective bargaining agreements complicate the rule making process, we would appreciate any attention you can give to that point so that those who are working within a collective bargaining agreement have clearer guidance in the rules.

MM:
We are not in a position to provide guidance on collective bargaining to anybody. However, what I will say is that if the decision is that the local Ordinance supersedes collective bargaining, we will have a legal explanation to the Commission so that you understand where that is coming from.

MB:
Well, okay, then, what I'm hearing is that one likely outcome of clarifying the rules would be to indicate that the rules apply regardless of wording in collective bargaining agreements which would seem to contradict that. The clarification in the rule would say: this rule supersedes other language in a collective bargaining agreement.

MM:
The Ordinance, not the rule, the Ordinance supersedes collective bargaining.

MB:
The rule should clarify in which ever direction you care to take it, how collective bargaining agreements are affected by the Ordinance.

MM:
I disagree, but we will bring it back to labor attorneys.

GW:
Employers will seek that or the unions will seek that.

MM:
The question was asked at some point throughout, not necessarily the public comment period, but before when I was starting to get all of the questions and the emails, somebody said, "Can you tell us how we have to negotiate with the union to be in compliance with this Ordinance?" The City is not in a position to provide legal advice to

any employer on what to do with collective bargaining. That is our general position. I understand why you are saying that we may need to provide more clarification, but to me the position is, if the City is saying that the local ordinance trumps collective bargaining, we will explain that to the Commission, we will explain that to the businesses, we will explain that to whomever we have to explain it to. But to have the Commission take a position of providing guidance on collective bargaining, I think is a mistake.

MB:
Yeah. I think that this is a language issue at the moment. As we are talking about this, I still hearing you say that it is likely that the rule will point out that the Ordinance has an effect which may supersede collective bargaining agreements and that kind of effect is possible, it may be useful to clarify that fact.

MM:
It is there, but we will go back. There is a reference that provides exactly that, but if you feel we that we need to provide additional information we can take a look at that.

MB:
I had called attention to that specific reference and maybe you covered it well then.

RV:
Are we still on #9?

GW:
The Chair is moving unless you had something to add.

RV:
I just wanted to ask that if the City Attorney comes back with advice that taking tips into consideration with regard to tipped employees, that I would also like to know from them how we could go about seeking remedy for that if the Commission decided to.

MM:
Is that something that the full Commission wishes to do? I hate to put extra work on their plate at this point unless a decision has been made that that is the direction the Commission wants to go in.

GW:
How strongly do you feel about it Commissioner Vahey?

RV:
I feel very strongly about it. I would have to object to it during a vote, but that is just one person's view. I believe that the tips these folks get, represent benefit they brought to the organization that is able to pay them at a low rate, relatively, to other employees, just because they are tipped. And so here, we have, I think it is kind of like we are jeopardizing them in two ways. I feel that their tips by credit card and the estimate that's

laid in by the employer and is provided to the IRS, gives a fair view of the contribution that they are making to that organization and ought to be considered.

GW:
Well, we don't have to have a final word on it today. We're going have to revisit it anyway.

MB:
Maria was suggesting that it is in part a question of the priorities for the work the City does. Clearly if the City feels that the Ordinance does not allow for language that would include some policy with respect to tips, other than saying they are not included, then I would respect the legal opinion of the City on that point. If the City feels that there may be some circumstances, or some room in the rule making process that would allow for consideration of the affect of tips on wages in this context, if there's some opportunity legally for the Commission to weigh that issue, then I would like to hear it again.

GW:
The first situation, you said you don't have any opinion on if there's some ordinance that said it was ruled out.

MB:
Well, I mean, we don't have much power here. If the lawyers tell us that there's no room in the wording of the Ordinance to address this issue, in any way other than the way it's been currently addressed, then I don't have a specific place to stand on that point. But if it turns out to be ambiguous, in any particular way as a matter of law, that is, if the rules could be this way or that, then I'd like to see what those options are, because I share some of Ray's concern about the fact that tipped employees start with a much smaller wage base and that make some difference to them and do we have flexibility within the rules if we, if there is that flexibility, I would like to hear of that option.

MM:
I was thinking of the comment by Commissioner Gamboa that under that scenario, tipped employees would actually be calling in sick because their going to making more money than when they report to work.

MB:
But that questioning of a scenario, per say, is not a legal approach per say. I mean the question of ….there's a variety of issues here where motivations and scenarios may be spawned in different ways, but our objective is to set up rules which are effective—which appear to work most effectively and stay within the legal requirements of the Ordinance.

MM:
And the intent of the Ordinance ….

IG:
I don't know how we could word it any other way, so…

GW:
That's right.

MM:
Well, we've made a note and I'm sure that Heidi is going to…

HG:
I know we've heard issues that have---I know you wanted an answer quicker than tomorrow, but the issues as far as collective bargaining, the issues as far as FMLA vs. Paid Sick Leave Ordinances, Worker's Comp…that's why it's taking this long. You do have all of things to take into consideration when your writing a rule to make sure that while you're trying to be as clear as you can, again, it's going to have to be taken up by the employee and the employer on a case-by-case basis. We're not going to be able to cover every single instance.

GW:
Well I think we've gotten to the place that—we aren't going to get an answer tomorrow and so, there are some things that we just like—it's probably worth seeking out so we can move on. And so there is no ambiguity about it. If it's permissive, then that's where we are. But if it's not, as Commissioner Barndt said, "We don't have any power on it", then we move.

HG:
Correct. I think everybody here is trying to make these rules as close to perfect as we can, but with the understanding that….

GW:
Yes, I think we all got the sentiments of Rule 9. Okay, let's move. The last one that I have, unless, I am mistaken, is Rule 24. Okay?

<u>Rule 24</u>

RV:
In the discussion at the last meeting, I mentioned having difficulty with the word "willfully" and that is a qualifier that will be looked at as needed. So I would suggest that the language be changed to include "or negligibly". So the language would read "willfully or negligibly" violates the Ordinance. And, furthermore, add language that would ensure that if the employer had an impact on more than one employee, if there were multiple employees involved, then whatever the fine was that was affixed would be multiplied by the number of employees impacted. And, that 24.2, which goes for a second breach, would have it's language changed to be aligned with 24.1.

MB:

I understand that 109 is a piece of legislation that is passed by Council and that it's not a "rule" per say. I had also raised some questions about whether at some point we might feel that the provisions of 109 don't fit this as well as they might have other situations. So there may be a point at which we would want to address raising a question with the Common Council. I personally don't feel that we're at that point now, but that seems to be where this is placed. The Common Council put together legislation rules, excuse me, an ordinance that applied initially to rights violations of one sort or another and we're in a more complicated environment here. So at some point, perhaps after we've had some sense of experience with the ordinance itself, or but at least as a separate exercise, we might want to address questions with 109.

MM:
I think that a lot of the public feedback we got back on Rule 24 had to do with the unreasonableness of 30 days. You know, you need to be able to respond to the charges and be able to produce evidence, and some employers were saying 'you're not giving us a lot of time'. But the fact is that the rules didn't create that timeline, Chapter 109 did. But, I think again as with every other rule, the legal people are looking at that particular provision and if there is any opportunity to create a process that is more reasonable, we'll certainly bring that back. I don't know if you, by creating rules, can undermine what the Ordinance says, and that is a legal issue. But, that particular issue is going to be addressed by the City Attorney's Office because there is a number of employers that raised that same issue.

MB:
So you will already be looking at the question as to whether Common Council should be advised as to ambiguities that this Ordinance creates in the administration of 109.

MM:
Again, the legal issue relates to the ability of the City to do anything with the direct legislation that passed in November and because 109 is cross-referenced to the direct legislation, there might be issues there that we can't touch for two years. I don't know—but those are legal issues….

HG:
That very well may be the case.

MB:
Oh. I thought I heard that last time that, in fact, the 2-year rule may not apply to modifications in 109 as long as it seemed to not contradict…

HG:
There may be instances within the rule that that holds true. And there may be others ones where there in such conflict that it's going to have to wait until 109 is modified, if in fact it is modified.

MB:

I'm certainly open to more conversation about 109 and I think that's what Maria was addressing as well.

GW:
Is there any other discussion on Item #4? Let's move on.

Agenda Item #5

Chairperson Williams stated that there was nothing to report on Agenda Item 5 and moved on.

Agenda Item #6

Chairperson Williams motioned to tentatively schedule the next meeting for Friday, June 19th, 2009 at 2:00 p.m. unless more members are able to participate on Tuesday, June 16th, 2009. Commissioner Barndt moved, seconded by Commissioner Vahey. Commissioner Williams then motioned for adjournment. Moved by Commissioner Barndt and seconded by Commissioner Vahey.

The meeting adjourned at 3:45 p.m.